

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>KENNETH COLE,</b>	)	
<b>BRIGITTE BROWN,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>C.A. No. 05-270 (KAJ)</b>
	)	
<b>DELAWARE TECHNICAL AND</b>	)	
<b>COMMUNITY COLLEGE,</b>	)	
	)	
<b>Defendant.</b>	)	

**PROPOSED PRETRIAL ORDER**

This matter comes before the Court at a final pretrial conference held pursuant to Rule 16, Federal Rules of Civil Procedure.

**Plaintiff(s) Counsel:** Jeffrey K. Martin, Esquire  
Lori A. Brewington, Esquire  
Margolis Edelstein  
1509 Gilpin Ave  
Wilmington, DE 19806

**Defendant(s) Counsel:** David H. Williams, Esquire  
James H. McMackin, III, Esquire  
Morris, James, Hitchens & Williams, LLP  
222 Delaware Avenue  
P.O. Box 2306  
Wilmington, DE 19899-2306

**I Nature of the Case**

Plaintiff Brigitte Brown (“Brown”) and Plaintiff Kenneth Cole (“Cole”) (hereinafter Brown and Cole together the “Plaintiffs”) each filed a complaint in the United States District Court for the District of Delaware alleging racial discrimination, retaliation, failure to promote, and breach of the covenant of good faith and fair dealing against Defendant Delaware Technical and Community College (hereinafter “Del Tech” or the “College”). Plaintiffs’ allegations of racial discrimination were based on the

College's decision to move Plaintiffs to an allegedly inadequate work space and Defendant's alleged failure to afford Cole the opportunity to apply for the Special Programs Director at the College. Further, Plaintiffs allege in their Complaints that they were retaliated against for engaging in a protected activity. Finally, Plaintiffs allege that the College's conduct constitutes a violation of the covenant of good faith and fair dealing implicit in employment agreements.

## **II Jurisdiction**

A. This is an action for:

- (a) A declaration that the conduct engaged in by the College to be in violation of Plaintiffs' rights;
- (b) A judgment ordering the College to provide appropriate back pay with pre- and post-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the College's unlawful employment practices;
- (c) A judgment in Plaintiffs' favor ordering the Defendant to provide compensation for non-pecuniary losses, including, but not limited to, pain, suffering, and humiliation, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices;
- (d) A judgment in Plaintiffs' favor ordering the College to provide compensation for past and future pecuniary losses, in amounts to be determined at trial;
- (e) A judgment in Plaintiffs' favor ordering the College to pay punitive damages for its malicious and/or reckless conduct in amounts to be determined at trial;

(f) A judgment in Plaintiffs' favor ordering the College to pay the costs of reasonable attorneys' fees and expenses and the costs of this litigation; and

(g) A grant such other further relief as this Court deems just and proper.

B. Jurisdiction in this action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., as amended by the Civil Rights Act of 1991, 42 U.S.C. § 704(a) of Title VII of the Civil Rights Act. The jurisdiction of the Court is not disputed.

The state law claim regarding the breach of the implied covenant of good faith and fair dealing is brought pursuant to the pendant jurisdiction of this Court.

### **III Uncontroverted Facts**

The following facts are not disputed or have been agreed to or stipulated by the parties:

1. Cole, an African-American, was hired by Delaware Technical & Community College as a part-time Student Enrichment Coordinator for the Upward Bound Math and Science Program (hereinafter "UBMS") in or around November 1999.
2. Cole has been continuously employed as a part-time employee by Del Tech since that time.
3. Cole served in the military from 1977 and continuing through 1983.
4. Prior to working for Del Tech, Cole worked for PECO Energy in Philadelphia. Cole filed a charge of discrimination against PECO Energy.
5. Brown, an African-American, was hired by the College as a full-time Student Enrichment Coordinator for the UBMS department on or about January 8, 2001.

6. The College is a statewide institution of higher education, i.e. a local community college, providing academic, technical, continuing education, and industrial training to students.

7. At all relevant times to this action, the College had three (3) federal grant TRIO programs: the Educational Talent Search (ETS) Program, the Upward Bound Classic (UBC) Program and the UBMS program.

8. Cole is and Brown was a student enrichment coordinator in the UBMS department. At certain times relevant to this case the UBMS department consisted of only African-American employees, including an African-American Program Manager, Rosetta Henderson ("Henderson"). The other two TRIO programs, ETS and UBC, had Caucasian Program Managers.

9. At all relevant times to this matter, Dr. Sue Zawislak ("Zawislak"), a Caucasian female, served as College's Director of Corporate and Community Programs ("CCP"), Ann Del Negro ("Del Negro"), a Caucasian female, served as the department chair for Youth Programs, the Assistant Director of CCP, then subsequently the Director of CCP, and Paul Morris ("Morris"), a Caucasian male, served as the Program Manager for ETS, the Special Programs Director for the TRIO programs, the Program Manager for ETS, then subsequently the acting chair (later, the chair) of the Community and School Projects department.

10. Going back to at least 1999, it was a continuing goal of the College to "reexamine existing office space and reallocate where appropriate." The Fiscal Year 2000 achievement report repeated the plan to examine and relocate office space. The same goal appears in the Fiscal Year 2001 report.

11. On August 5, 2002, the relocation of the UBMS department was discussed at a Program Manager's meeting. Morris, Special Programs Director, met with Plaintiffs and the other two (2) members of their department, Henderson and Liz Wilson ("Wilson"), an African-American, on August 12, 2002 and informed them that the UBMS department would be relocated.

12. On August 13, 2002, the former Program Manager for UBMS, Henderson, informed Morris that the UBMS staff wanted to discuss the proposed relocation.

13. On August 14, 2002, the UBMS staff sent an e-mail to Zawislak regarding the relocation.

14. Upon Henderson's return from vacation on August 23, 2002, Zawislak asked Henderson, the UBMS supervisor, to handle the matter.

15. August 28, 2002, Henderson sent an e-mail to Morris and DelNegro requesting they meet with the UBMS staff. The next day, Morris and DelNegro met with the UBMS staff and discussed the office relocation.

16. On August 30, 2002, Brown sent an e-mail asking Zawislak to meet with UBMS staff concerning the relocation.

17. Cole met with a representative from the College's Human Resources department to discuss the relocation.

18. At a supervisor's meeting on September 4, 2002, DelNegro, Henderson, Morris, and Zawislak discussed the relocation.

19. On September 5, 2002, Zawislak and DelNegro met with Brown individually to discuss the relocation.

20. That same day, Cole filed his first grievance.

21. On September 11, 2002, Zawislak, DelNegro and Cara Stanard ("Stanard") met with Cole and discussed his objections to the move.

22. On October 2, 2002, Zawislak and DelNegro met with Plaintiffs and their secretary.
23. The day before the move, Plaintiffs contacted Winner to request another meeting regarding the relocation.
24. On October 7, 2002, Cole filed a supplement to his grievance.
25. The UBMS department was relocated to Office 408 on October 8, 2002.
26. Brown worked in Office 408 until June 27, 2005. Cole continues to work in Office 408 with a full-time secretary and Brown's replacement.
27. After the UBMS department moved to Room 408, Kate Sullivan ("Sullivan"), a Caucasian female, Program Manager of UBC moved into Brown's former office.
28. The UBMS Program is a federally funded program
29. The position of Special Programs Director was not posted by the College.
30. On September 5, 2002, Cole filed a grievance, alleging that the "promotion" of Morris to Special Programs Director violated College policy.
31. On September 9, 2002, Zawislak sent a memo to all CCP staff advising that as of July 1, 2002, Morris was reclassified to Special Programs Director, not promoted, as noted in the CCP August update.
32. In order for an employee to be "reclassified" into a different position at the College, the employee must be able to work the additional job duties of the new position within the employee's regular working hours.
33. Cole filed a Step 2 Grievance in or around October 22, 2002. The "promotion" or "reclassification" of Morris was investigated by Jacqueline D. Jenkins ("Jenkins"), Director of Human Resources at the request of Lawrence H. Miller ("Miller"), Vice President & Campus Director.
34. Cole was a part-time employee because he owned and operated a business.

35. The Special Programs Director was a full-time position, requiring Cole to work more than 29 hours per week.

36. It was determined that Morris was approached by Zawislak and Del Negro shortly after Del Negro's promotion in 2001 to assist with fiscal and management responsibilities that were previously managed by Del Negro.

37. In filling vacancies, qualified regular college employees will receive equal consideration for promotion, in accordance with the College's Statement of Affirmative Action Policy, regardless of race, color creed, sex national origin, etc.

38. Morris' salary increased for a period of time from a pay grade of B-16 to a pay grade of B-17, as a result of the change in his position from Program Manager to Special Programs Director.

39. Effective December 1, 2002, Morris was returned to his position of Program Manager and removed from the position of Special Program Director.

40. Zawislak informed Henderson that Cole must begin working at 8:30 am rather than 8:00am .

41. In November 2002, Cole requested to reduce his hours of work from 8:30am to 12:30 pm for purported medical reasons.

42. Jenkins advised Cole that if he did not work the College hours of between 8:30am to 4:30pm, or did not provide additional requested medical documentation, his "employment may be terminated."

43. Brown sent a written request addressed to Miller for a change in her working hours from her current schedule of 8:30-4:30 to 9:00-5:00pm

44. When Jacquita Wright-Henderson was appointed to Acting Assistant Director of Corporate and Community Programs, Morris was appointed to Acting Department Chair of Community and School Projects in 2003. As Acting Assistant Director, Jacquita

Wright-Henderson, was assigned management oversight of the UBMS program in the absence of a Program Manager. This arose when Del Negro went to work at the Owens Campus.

45. The Program Manager position for UBMS was posted both internally and externally.

46. The first posting for the Program Manager of UBMS occurred between March 15, 2004 and March 29, 2004.

47. Morris served on the hiring committee for this position and was aware that Brown had filed an EEOC charge against the College.

48. The Program Manager position was posted again from June 14, 2004 through June 28, 2004. Paul Morris served on the hiring committee. Brown was granted an interview

49. The position was posted again between September 4, 2004 and September 20, 2004. Brown did not apply. Ultimately, Andrea Coleman ("Coleman"), an African-American, laterally transferred into the Program Manager position. Coleman was previously Program Manager of Youth Camp Programs. Coleman and Brown are of the same protected class.

50. Coleman also served on the interview committee for the UBMS Program Manager position, the position for which she later was hired.

51. Brown had worked in the UBMS program since 2001. Coleman did not receive the UBC Program Manager position when she interviewed for the Program Manager position in that group as a Student Enrichment Coordinator.

52. Brown and Cole filed grievances concerning Coleman's lateral transfer to the UBMS Program Manager position.

53. On or about October 15, 2002, Cole filed a charge of discrimination against the College with the Delaware Department of Labor alleging race discrimination and retaliation.



54. The Delaware Department of Labor investigated Cole's charge and the United States Equal Employment Opportunity Commission ("EEOC") issued a Notice of Right to Sue Letter on February 2, 2005.

55. On or about November 8, 2002, Brown filed a charge of discrimination against the College with the Delaware Department of Labor alleging race discrimination and retaliation.

56. The Delaware Department of Labor investigated Brown's charge and the EEOC issued a Notice of Right to Sue Letter on February 2, 2005.

## **VI Agreed to Issues of Law**

## **V Witnesses**

A. List of witnesses the plaintiff expects to call, including experts:

1. Expert witnesses.

Dr. Oluseyi Senu-Oke.  
Dr. Tamara Walker-Gladney

2. Non-expert witnesses.

Plaintiff, Kenneth Cole, who can be contacted through his attorney, Jeffrey K. Martin or Lori A. Brewington, Margolis Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware 19806, 302-777-4680.

Plaintiff, Brigitte Brown, former Student Enrichment Coordinator at Delaware Technical and Community College who can be contacted through her attorney, Jeffrey K. Martin or Lori A. Brewington, Margolis Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware 19806, 302-777-4680.

Jimmy Bunkley, Fiancee to Plaintiff Brown who can be contacted through her attorney, Jeffrey K. Martin or Lori A. Brewington, Margolis Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware 19806, 302-777-4680.

Anthony Brown, Eyan Evans Brown, Brigitte Evans Brown, Plaintiff Brown's children who can be contacted through her attorney, Jeffrey K. Martin or Lori A. Brewington, Margolis

Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware 19806, 302-777-4680.

Renee DeJean, Cousin to Plaintiff Brown, who can be contacted through her attorney, Jeffrey K. Martin or Lori A. Brewington, Margolis Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware 19806, 302-777-4680.

Larry Miller, Vice President and Campus Director of Delaware Technical and Community College.

Jacqueline Jenkins, Director of Human Resources at Delaware Technical and Community College.

Jacquita Wright Henderson, Delaware Technical and Community College.

Andrea Coleman, Delaware Technical and Community College.

Eugene Barnes, Program Manager of the Upward Bound Classic Program at Delaware Technical and Community College.

Tonia Conley, Student Enrichment Coordinator of Upward Bound Classic at Delaware Technical and Community College.

Ann Del Negro, Manager of Corporate and Community Programs at Delaware Technical and Community College.

Rosetta Henderson, Program Manager of Upward Bound Math/Science at Delaware Technical and Community College.

Paul Morris, Program Manager, Talent Search at Delaware Technical and Community College.

Mary Shields, Human Resources Department at Delaware Technical and Community College.

Cara Stanard, Human Resources Department at Delaware Technical and Community College.

Kate Sullivan, Program Manager for Upward Bound Classic at Delaware Technical and Community College.

Elizabeth Wilson, Upward Bound Math/Science Secretary at Delaware Technical and Community College.

Sue Zawislak, Director of Corporate and Community Programs at Delaware Technical and Community College.

Plaintiff reserves the right to call any witness named by Defendant in this matter.

B. List of witnesses the defendant expects to call, including experts:

1. Expert witnesses:-

None

2. Non-expert witnesses:-

1. Lawrence Miller  
Vice President & Campus Director
2. Susan Zawislak  
Director of Corporate & Community Programs
3. Ann DelNegro  
Director of Corporate & Community Programs (Owens Campus)
4. Paul T. Morris, Jr.  
Chair, Community & School Projects
5. Jacqueline D. Jenkins  
Director of Human Resources
6. Jacquita Wright-Henderson  
Assistant Director of Corporate & Community Programs
7. Cara Stanard  
Assistant to the Dean of Instruction
8. Rosetta Henderson  
Former Program Manager, Upward Bound Math and Science
9. Edward Cunningham  
Assistant Director of Administrative Services
10. Angie McCloskey  
Program Manager Upward Bound Classic
11. Kate Sullivan  
Former Employee of the College
12. Andrea Coleman  
Former Employee of the College
13. Rosanna Brown-Simmons  
Program Manager, Upward Bound Math and Science

14. Patricia A. Ramone, Ed.D.  
Former Employee of the College
15. Tonia Conley  
Former Employee of the College
16. Peter Lonie  
Former Employee of the College
17. Tammy L. Fenimore  
Human Resources Specialist II
18. Sam Panella  
Department Chair, Science
19. Reuben Evans  
Counselor
20. Crystal Heath  
Former Employee of the College
21. Elizabeth Wilson (Persons)  
Secretary, Upward Bound Math and Science
22. Brian Shirey, Esquire  
Chief Legal Counsel
23. Dr. Connie Winner  
Assistant Campus Director
23. Brigitte Brown  
Former Student Enrichment Coordinator
24. Kenneth Cole  
Student Enrichment Coordinator
25. Cathy Hagan  
Administrative Assistant
26. Karen Bourne-Douglass  
Educational Laboratory Specialist
27. Elizabeth Dowell  
Human Resources Technician
28. Rose Kipp  
Educational Training Specialist

29. Tammy Patone  
Accountant I (Business Office)
30. Patricia Williams  
Instructor – ECE
31. Dan Ehmann  
Business Manager
32. Michelle Rawls  
Educational Training Specialist

Defendant reserves the right to call any witness named by Plaintiffs in this matter.

## **VI Exhibits**

### **A. Plaintiff's Exhibits:**

<b>Plaintiff's Exhibit Number</b>	<b>Description</b>	<b>Defendant's Basis for Objection</b>	<b>Plaintiff's Response to Objection</b>
PX. 1	Chronology of Program Manager-UBMS, First Posting, Corporate & Community Programs (DEF 000478)		
PX. 2	Letter to Brigitte L. Brown from Tammy L. Fenimore dated April 26, 2004. (DEF 000422)		
PX. 3	Chronology of Program Manager-UBMS, Second Posting, Corporate & Community Programs (DEF 000704)		
PX. 4	Letter to Brigitte L. Brown from Tammy L. Fenimore dated July 26, 2004. (DEF 000437)		
PX. 5	Upward Bound Math/ Science Program Manager		

	Recruitment. (DEF 001123)		
PX. 6	Delaware Technical and Community College Grievance Form Step I, signed by Brigitte Brown dated March 8, 2005. (B-0006)		
PX. 7	Email to Jacquita Wright from Kenneth Cole re: Personnel & Policy Manual Concerns dated February 2, 2005. (B-0007)		
PX. 8	Memorandum to Brigitte Brown from Dr. Susan Zawislak re: Grievance dated February 21, 2005. (DEF 001124)		
PX. 10	Letter to Lawrence Miller from Kenneth Cole re: Supplement to Grievance Retaliatory Actions dated October 7, 2002. (B-0013 – B-0014)		
PX. 11	Email to Kenneth Cole from Rose Henderson re: Working Hours dated September 19, 2002. (DEF 001063)		
PX. 12	Memorandum to Kenneth Cole from Jackie Jenkins re: Physician's Statement dated November 27, 2002. (DEF 001102)		
PX. 13	Doctor John E. Hocutt, Jr's statement re: Kenneth Cole re:	Hearsay- F.R.E. 802. Further objection on grounds this	F.R.E. 803 (6) F.R.E. 803 (4) F.R.E. 803 (5)

	November 25, 2002 doctor's visit. (B-0017)	document purports to be an expert report but Rule 26(a)(2) is not satisfied.	
PX. 14	Email to Ann DelNegro from Rosetta Henderson re: Ken's Working Hours dated October 30, 2002. (DEF 001065)		
PX. 15	Letter to Kenneth Cole from Jacqueline Jenkins re: physicians note dated December 13, 2002. (B-0019 – B-0021)		
PX. 16	Memorandum from Rosetta Henderson to Susan Zawislak re: Kenneth Cole's Doctor's note and reduced working hours dated November 21, 2002. (B-0022)		
PX. 17	Doctor John E. Hocutt, Jr's statement re: Kenneth Cole re: November 25, 2002 doctor's visit. Signed by Dr. (B-0023)	Hearsay- F.R.E. 802. Further objection on grounds this document purports to be an expert report but Rule 26(a)(2) is not satisfied.	F.R.E. 803 (6) F.R.E. 803 (4) F.R.E. 803 (5)
PX. 18	Doctor John E. Hocutt, Jr's doctor's note dated December 16, 2002. (B-0024)	Hearsay- F.R.E. 802. Further objection on grounds this document purports to be an expert report but Rule 26(a)(2) is not satisfied.	F.R.E. 803 (6) F.R.E. 803 (4) F.R.E. 803 (5)

PX. 19	Memorandum to Sue Zawislak from Rosetta Henderson re: Kenneth Cole re: Supplement to Grievance dated November 13, 2002. (DEF 000371- DEF 000372)		
PX. 20	Memorandum to Larry Miller from Brigitte Brown re: Review to Mr. Cole's memorandum dated October 15, 2002. (B-0027 – B-0028)		
PX. 21	CCP Youth Department 4 <sup>th</sup> Floor East Building Office Moves. (DEF 000325 – DEF 000326)		
PX. 22	Attachment #2 4 <sup>th</sup> Floor Office Changes. (DEF 001001)		
PX. 23	Room Numbers (DEF 000477)		
PX. 24	Staff meeting minutes dated August 29, 2002. (DEF 000300 – DEF 000302)		
PX. 25	Photographs of working spaces of Brigitte Brown and Kenneth Cole with their co-workers before the move, rooms 424, 408, 428A, and 428B (B-0036 – B-0040)		



PX. 26	Photographs of working spaces of Brigitte Brown and Kenneth Cole with their co-workers after the move, room 407. (B-0041 – B-0043)		
PX. 27	Photographs of working spaces of UBC and ETS Program members (B-0044 – B-0045, B-0047 – B-0053)		
PX. 28	Staff meeting minutes dated September 5, 2002 (DEF 000315 – DEF 000317)		
PX. 29	Email to Connie Winner from Brigitte Brown re: East Building Youth Program Move dated October 7, 2002. (DEF 000351 – DEF 000351)		
PX. 30	Delaware Technical Community College Applicant and Community Support. (B-0059)		
PX. 31	Memorandum to Connie Winner from Brigitte Brown re: Youth Program Move dated October 15, 2002. (B-0060)		
PX. 32	Plans for 4 <sup>th</sup> floor offices. (B-0061 – B-0064)	Relevance. F.R.E. 402. The plans for the 4 <sup>th</sup> floor offices as depicted in this exhibit are misleading as they are not drawn to scale. Because they	In accordance with F.R.E 402, all relevant evidence is admissible. The plans for 4 <sup>th</sup> floor offices as depicted in B-0031-B-0064 are relevant to the

		are misleading, they are not relevant.	issue of Plaintiff's move to Room 408
PX. 33	Program Manager's Meeting Minutes dated August 5, 2002. (DEF 000288 – DEF 000290)		
PX. 34	Corporate and Community Programs Division Stanton/Wilmington August 2002 Update. (B-0068)		
PX. 35	Section IV (As amended May 1, 1992) Promotion and Transfer Policy. (B-0069)		
PX. 36	Section III (As amended November 17, 1998) Employment Procedures and Terms of Employment. (B-0070 – 0071)		
PX. 37	Memorandum to Kenneth Cole from Susan Zawislak re: Grievance (W03-102) dated September 25, 2002. (DEF 000348)		
PX. 38	Memorandum to Lawrence Miller from Jacqueline Jenkins re: Paul Morris dated October 22, 2002. (DEF 000990)		

PX. 39	Memorandum to Jackie Jenkins from Lawrence Miller re: Rescission of the Reclassification of Paul Morris dated October 29, 2002. (B-0074)		
PX. 40	Letter to Lori Brewington from Dr. Tamara Walker-Gladney Ph.D. re: Brigitte Brown's treatment dated March 7, 2006. (B-0075)	Hearsay- F.R.E. 802.	F.R.E. 803 (6) F.R.E. 803 (4) F.R.E. 803 (5)
PX. 41	Letter to Lori Brewington from Dr. Oluseyi Senu-Oke re: Brigitte Brown's treatment dated March 6, 2006. (B-0076)	Hearsay- F.R.E. 802.	F.R.E. 803 (6) F.R.E. 803 (4) F.R.E. 803 (5)
PX. 44	Grievance Form re: Paul Morris being reclassified. (DEF 000319)		
PX. 45	Memorandum to CCP Staff from Susan Zawislak re: CCP August Update Revision dated September 9, 2002. (DEF 000329)		
PX. 46	Upward Bound Math and Science Center Program Years 2000-2005, October 2, 1998 cover. (DEF 000018)		
PX. 47	Memorandum to Brigitte Brown and Kenneth Cole from Connie Winner re: East Building Youth Program Move 10/8/02 dated		

	October 7, 2002. (DEF 000352)		
PX. 48	Wilmington Fire Department Fire Marshal's Office Complaint Report dated October 10, 2002. (B-0086)		
PX. 49	Letter to Ms. Henderson dated February 3, 2004. (B-0087)		
PX. 50	Memorandum to Jacqueline Jenkins from Susan Zawislak re: Upward Bound Math Science dated December 12, 2002. (B-0088)		
PX. 51	Memorandum to Jacqueline Jenkins from Susan Zawislak re: Brigitte Brown dated December 4, 2002. (B-0089)		
PX. 52	Memorandum to Susan Zawislak from Lawrence Miller re: Upward Bound Math/Science Employees dated October 17, 2002. (B-0090)		

Plaintiff reserves the right to use any exhibits on Defendant's list. Additional exhibits not listed above may be offered for rebuttal purposes with the Court's permission. Plaintiff reserves the right to use blow-ups for any demonstrative exhibit admitted into evidence by the Court. Plaintiffs reserve the right to introduce into evidence in its case any exhibit listed by Defendant. Additional exhibits not listed above may be offered for rebuttal purposes with the Court's permission. Plaintiffs reserve the right to use blow-ups for any demonstrative exhibit admitted into evidence by the Court. Plaintiffs reserve the right to lodge with the Court the Defendant's deposition transcripts (and exhibits thereto) and Defendant's written discovery responses.

## B. Defendant's Exhibits:

<b>Defendant's Exhibit Number</b>	<b>Description</b>	<b>Plaintiff's Basis for Objection</b>	<b>Defendant's Response to Objection</b>
DX. 1	Cole's Complaint		
DX. 2	Brown's Complaint		
DX. 3	Cole grievance, dated 9/5/02. DEF 000318-321		
DX. 4	September 9, 2002 memo from Zawiskak. DEF 000329		
DX. 5	September 25 memo from Zawislak. DEF 000348		
DX. 6	Program years 2000-2005 memo, dated October 2, 1998. DEF 000018-019		
DX. 7	Cole data sheet. DEF 000130-131		
DX. 8	Stanard meeting notes. DEF 000305-307		
DX. 9	Fund year reports and operational plan. DEF 000001-9		
DX. 10	Meeting minutes from August 5, 2002. DEF 000288-290		
DX. 11	Email from Cole dated August 14, 2002. DEF 000292		
DX. 12	Email from Zawislak dated August 23, 2002. DEF 000293		
DX. 13	Email from Henderson dated August 28, 2002. DEF 000297		

DX. 14	Meeting minutes dated August 29, 2002. DEF 000300-301		
DX. 15	Email from Brown dated August 30, 2002. DEF 000303		
DX. 16	Meeting minutes from September 4, 2002 meeting. DEF 000311-314		
DX. 17	Meeting minutes from September 5, 2002 meeting. DEF 000315-317		
DX. 18	Email from Del Negro dated September 12, 2002. DEF 000342		
DX. 19	Email from Brown dated October 7, 2002. Brown/Cole 143-144		
DX. 20	October 7, 2002 memo from Winner. DEF 000352		
DX. 21	October 8, 2002 memo from Cole. DEF 000353		
DX. 22	October 8, 2002 memo from Miller. DEF 000354		
DX. 23	October 11, 2002 email from Zawislak. DEF 000355		
DX. 24	Fire Marshall's report dated October 10, 2002. DEF 000356		
DX. 25	February 3, 2004 letter to Henderson. DEF 000414-417		
DX. 26	Meeting minutes from December 13, 2002 meeting. Brown/Cole 60-62		

DX. 27	Letter from Del Negro to Henderson. DEF 001192-001194		
DX. 28	Memo from Zawislak dated December 12, 2002. DEF 000402-403		
DX. 29	Memo from Zawislak dated October 22, 2002. DEF 000398-399		
DX. 30	Memo from Zawislak dated December 4, 2004. DEF 000401		
DX. 31	Memo from Zawislak dated October 30, 2002. DEF 000400		
DX. 32	Memo from Cole dated December 4, 2002. DEF 000107-108		
DX. 33	Brown Employment Application. DEF 000483-487		
DX. 34	Staff Vacancy Announcement (March Dates). DEF 000480		
DX. 35	Letter from Fenimore dated April 26, 2004. DEF 000482		
DX. 36	Chronology of Program Manager (First Posting). DEF 000478		
DX. 37	Staff Vacancy Announcement (June Dates). DEF 000706		
DX. 38	Letter from Fenimore dated July 26, 2004. DEF 000852		
DX. 39	Chronology of		

	Program Manager (Second Posting). DEF 000853		

DX. 40	Memo from Lawrence Miller dated October 17, 2002. DEF 000396-397		
DX. 41	E-mail from Henderson dated September 19, 2002. DEF 000346		
DX. 42	Letter from Jacqueline Jenkins dated December 13, 2002. DEF 000384-386		
DX. 43	Memo from Kenneth Cole dated December 4, 2002. DEF 000378-379		
DX. 44	Organizational documents and charts. DEF 000010-17		
DX. 45	Office Moves chart. DEF 000025		
DX. 46	Memo to Zawislak. DEF 000026-27		
DX. 47	The College Personnel Policy Manual, available at <a href="http://www.dtcc.edu/hr/pages/ppm.html">http://www.dtcc.edu/hr/pages/ppm.html</a>		
DX. 48	UBMS Staff Time Commitments. DEF 000041		
DX. 49	Performance evaluation materials and employee input forms produced in this litigation. (e.g. DEF 000063-73; DEF 000094-96; DEF 000095-000105; DEF 000209-228)		
DX. 50	Time sheets produced in this litigation		
DX. 51	December 13, 2002 letter to Cole. DEF 000091-93		
DX. 52	Letter from Cole to Jenkins dated December 4, 2002. DEF 000107-108		
DX. 53	December 4, 2002 email from Jenkins to Cole. DEF 000110		
DX. 54	December 6, 2002 email from Cole to Jenkins. DEF 000111		
DX. 55	November 27, 2002 memo from Jenkins to Cole. DEF 000133		
DX. 56	May 25, 2005 letter to Brown. DEF 000152-153		



DX. 57	May 16, 2005 letter to Brown. DEF 000168		
DX. 58	November 4, 2002 memo from Zawislak. DEF 000176		
DX. 59	October 30, 2002 memo from Miller. DEF 000177		
DX. 60	Memo to Zawislak. DEF 000248-255		
DX. 61	Program documentation. DEF 000256-260		
DX. 62	February 9, 2001 memo to Miller. DEF 000263		
DX. 63	Timesheets and calendars. DEF 000274-281		
DX. 64	Email dated August 28, 2002 from Henderson. DEF 000298-299		
DX. 65	Handwritten notes of Stanard. DEF 000308-000310		
DX. 66	Meeting minutes of September 12, 2002. DEF 000343-344		
DX. 67	Email dated October 7, 2002 from Brown. DEF 000350-351		
DX. 68	Memo from Miller dated October 17, 2002. DEF 000357-358		
DX. 69	Memo from Zawislak dated October 22, 2002. DEF 000359-360		
DX. 70	Memo from Zawislak dated October 22, 2002. DEF 000361-362		
DX. 71	Memo to Cole dated October 28, 2002. DEF 000363-364		
DX. 72	Memo from Miller dated October 30, 2002. DEF 000365		
DX. 73	Memo to Henderson dated November 1, 2002. DEF 000368		
DX. 74	Handwritten notes dated November 4, 2002. DEF 000369-370		
DX. 75	Memo from Henderson dated November 13, 2002. DEF 000371-372		
DX. 76	Timesheet analysis dated November 15, 2002. DEF 000373		
DX. 77	Memo to Henderson dated November 15, 2002. DEF 000374		
DX. 78	Memo to Zawislak dated November 21, 2002. DEF 000375		
DX. 79	Memo to Cole dated November 27, 2002. DEF 000376		

DX. 80	Email to Cole dated December 4, 2002. DEF 000381		
DX. 81	Email to Jenkins dated December 6, 2002. DEF 000382-383		
DX. 82	Memo from Zawislak dated November 13, 2002. DEF 000390-391		
DX. 83	Memo to Henderson dated January 6, 2003. DEF 000404		
DX. 84	Memo from Henderson dated January 8, 2003. DEF 000405		
DX. 85	Memo from Miller dated August 8, 2003. DEF 000406		
DX. 86	Documents concerning Brown's application for the UBMS Program Manager position. DEF 000422-443		
DX. 87	Documents concerning Brown and other employees' applications for the UBMS Program Manager position DEF 000478-000974		
DX. 88	Paul Morris' personnel file. DEF 000978-001020		
DX. 89	Memo from Morris dated September 6, 2002. DEF 001021-1023		
DX. 90	Email from Henderson dated September 12, 2002. DEF 001056		
DX. 91	Documents concerning timesheets and calendars. DEF 001057-1094		
DX. 92	Email from Del Negro dated November 25, 2002. DEF 001100		
DX. 93	Email from Henderson dated November 26, 2002. DEF 001101		
DX. 94	Documents concerning Cole's physician statement. DEF 001102-001110		
DX. 95	Email from Brown dated September 30, 2002. DEF 001121		
DX. 96	Memo to Brown dated May 18, 2004. DEF 001122		
DX. 97	Performance appraisal. DEF 001126-001133		
DX. 98	Timesheets, calendars and leave requests. DEF 001134-001139		
DX. 99	Memo to Brown dated November 4, 2002. DEF 001140		
DX. 100	Email and hand written notes		

	written thereon dated September 10, 2004. DEF 001154		
DX. 101	Email dated May 27, 2004 from Zawislak. DEF 001157		
DX. 102	Email from Brown dated June 4, 2002. DEF 001161		
DX. 103	Letter to Brown dated May 16, 2005. DEF001164		
DX. 104	Reprimand dated June 3, 2003. DEF 001192-1194		
DX. 105	Summary of meeting dated March 28, 2003. DEF 001195-1198		
DX. 106	Email from Henderson dated March 13, 2003. Brown/Cole 0001		
DX. 107	Logs created by Cole. Brown/Cole 074-092.		
DX. 108	Brown resume. Brown/Cole 093-094		
DX. 109	McCloskey resume. Brown/Cole 095-096		
DX. 110	Memo from Brown received on September 3, 2002. Brown/Cole 137		
DX. 111	Memo from Zawislak dated September 13, 2002. Brown/Cole 138		
DX. 112	Memo from Winner dated October 7, 2002. Brown/Cole 145		
DX. 113	Memo from Brown dated October 15, 2002. Brown/Cole 146		
DX. 114	Calendars and related materials. Brown/Cole 152-160		

Defendant reserves the right to introduce into evidence in its case any exhibit listed by Plaintiff. Additional exhibits not listed above may be offered for rebuttal purposes with the Court's permission. Defendant reserves the right to use blow-ups for any demonstrative exhibit admitted into evidence by the Court. Defendant reserves the right to lodge with the Court the Plaintiffs' deposition transcripts (and exhibits thereto) and Plaintiffs' written discovery responses.

## **VII Damages**

### **A. Brown**

1. This is an action seeking a judgment against the College and in Brown's favor to provide appropriate back pay<sup>1</sup> with pre-judgment interest in the amount equal to the pay differential between the position of Student Enrichment Coordinator and Compensatory Program Manager. Specifically, Brown is seeking in excess of \$42,667.00 in back pay with pre-judgment interest.

2. Additionally, Brown is seeking non-pecuniary losses including pain, suffering and humiliation, past and future pecuniary losses, punitive damages in the amounts to be determined at trial.

3. Brown is also seeking out of pocket expenses.

4. Brown is also seeking costs of reasonable attorneys' fees and expenses provided by 42 U.S.C. § 2000e-5(f)(1).

5. Brown is also seeking front pay.

6. Brown is also seeking such other relief as the Court deems just and proper in the amounts to be determined at trial.

### **B. Cole**

1. This is an action seeking a judgment against Defendants and in Cole's favor to provide appropriate back pay with pre-judgment interest in the amount equal to the pay differential between the position of Student Enrichment Coordinator and Special Program Manager. Specifically, Cole is seeking in excess of \$115,628.00 in back pay with pre-judgment interest.

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<sup>1</sup> Brown and Cole's ability to prove damages and the right to present evidence on the subject of damages is challenged in the College's Motion for Summary Judgment, because the Plaintiffs have not set forth an expert to discount damages to present value. The College does not agree the Plaintiffs have a right to present evidence of damages without an expert witness.

2. Additionally, Cole is seeking non-pecuniary losses including pain, suffering and humiliation, past and future pecuniary losses, punitive damages in the amounts to be determined at trial.

3. Cole is also seeking out of pocket expenses.

4. Cole is also seeking costs of reasonable attorneys' fees and expenses provided by 42 U.S.C. § 2000e-5(f)(1).

5. Cole is also seeking front pay.

6. Cole is also seeking such other relief as the Court deems just and proper in the amounts to be determined at trial.

#### **VIII Bifurcated Trial**

The parties are not requesting a bifurcated trial.

#### **IX Trial Briefs**

The parties are not requesting trial briefs.

#### **X. Limitations, reservations and Other Matters**

A. **Length of Trial.** The probable length of this trial is 5 days. The case will be listed on the trial calendar when reached.

Mark appropriate box: Jury ☒

Non-Jury ☐

B. **Number of Jurors.** There shall be six jurors and \_\_\_\_\_ alternate jurors.

C. **Jury Voir Dire.** The Court will conduct voir dire supplemented with the following questions:

##### **Proposed by the Plaintiffs:**

1. Have you, a relative, or a friend, ever been involved in a dispute of unfavorable experience involving Plaintiffs Brigitte Brown or Kenneth Cole?

2. Have you, or any family member, or close friend, ever been employed by Delaware Technical and Community College?
3. Does any member of the panel have any personal knowledge of this case, or have you read or heard it discussed, or have an opinion regarding it?
4. Have you ever served before as a juror in a civil law suit?
5. Do you have any special disability or problem that would make it difficult or impossible for you to serve as a member of the jury in this case?
6. Do any of you know of any other matter, which you believe should be called to the Court's attention as having some bearing upon your qualifications or ability to sit as a juror, or which you think may prevent you from rendering a fair and partial verdict based solely upon the evidence and my instructions as to the law?

**Proposed by the College:**

1. Have you, a relative, or a friend, ever been involved in a dispute or unfavorable experience involving the Delaware Technical and Community College ("Del Tech")?
2. Del Tech is an agency of the State of Delaware. Do you have any beliefs or feelings for or against the State, or agencies of the State, which may prevent you from being completely fair and impartial in this case, and treating Del Tech as if it were an individual?
3. Are you, a relative, or a friend presently involved in an employment discrimination lawsuit or claim, or have you been involved in such a lawsuit or claim within the last 5 years?
4. Have you, a relative or a friend ever been involved as a party, witness, or otherwise, in a situation involving the workplace, or in a case involving a claim of employment discrimination?

5. Have you ever been sued or been involved in a serious dispute with your employer?
6. Do you feel that you have been treated unfairly at work or discriminated against in employment?
7. Are you, a relative, or a friend related to, or personally acquainted with Jeffrey Martin, Lori Brewington, David H. Williams or James H. McMackin, III or have you, a relative, or a friend ever been represented by Jeffrey K. Martin, Lori A. Brewington, David H. Williams or James H. McMackin, III, or the law firms Margolis Edelstein or Morris, James Hitchens & Williams?
8. Are you, a relative, or a friend, related to, or personally acquainted with any of the individuals who might appear as witnesses in this case (see attached list)?

**XI. Other Matters**

There is outstanding a summary judgment motion filed by the College.

IT IS ORDERED that this Final Pretrial Order may be modified as the trial of the action, or prior thereto, to prevent manifest injustice or for good cause shown. Such modification may be made either on application of counsel for the parties or on motion of the Court.

DATED: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND  
SUBSTANCE:

/s/ LORI A. BREWINGTON (#4522)  
ATTORNEY FOR PLAINTIFFS

James H. McMackin (#4284)  
ATTORNEY FOR DEFENDANT